

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Echonet Corporation)	File Number: EB-03-DV-020
)	
Operator of Unlicensed Television)	NAL/Acct. No. 200332800011
Broadcast Translator Station)	FRN 0008-3792-16
Cheyenne, Wyoming)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 3, 2003

By the Acting District Director, Denver Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Echonet Corporation, ("Echonet"), has apparently repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act"),¹ by operating a television broadcast translator station without Commission authorization. We conclude, pursuant to Section 503(b) of the Act,² that Echonet is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On October 22, 2002, an agent from the FCC's Denver Office received information that a television translator was operating on channel 49 in Cheyenne, Wyoming, without a valid FCC station license. The agent monitored transmissions on channel 49 in Cheyenne from October 22 through October 24, 2002, and observed retransmitted broadcast television programming on the aural carrier frequency of 685.7545 MHz.

3. On October 24, 2002, using direction finding techniques, the agent located the station's transmitter on the top floor of the Community First National Bank at 1800 Carey Avenue in Cheyenne, Wyoming. Evidence discovered during the inspection revealed Echonet as the station operator.

4. Review of the FCC's databases revealed that Echonet held a license for K49AY, Facility ID 18475, granted on July 10, 1986, for a television translator at coordinates N41-08-04 latitude and W104-49-02 longitude. The license for K49AY expired on October 1, 1998. Further review on March 26, 2003, of the FCC's databases revealed no current license issued for a television translator station to operate on channel 49 in Cheyenne, Wyoming, and no pending application or renewal application for channel 49 in Cheyenne, Wyoming.

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.³ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of the Act more than once or for more than one day.⁴

6. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. The Rules governing the licensing and operation of television translator broadcast stations are set forth under Subpart G of Part 74 of the Rules.⁵

7. Based on the evidence before us, we find that Echonet repeatedly violated Section 301 of the Act by operating a television translator broadcast station without a valid license for over 4 years. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁶ and Section 1.80 of the Commission's Rules,⁷ for operating an unlicensed radio station is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁸ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Echonet Corporation, is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Communications Act of 1934, as amended.⁹

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Echonet Corporation, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

³ 47 U.S.C. § 503(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁵ 47 C.F.R. § 74.701 *et seq.*

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. §§ 301 and 503(b); 47 C.F.R. §§ 0.111, 0.311 and 1.80.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration number (FRN) and also must note the NAL/Acct. No. referenced in the caption.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, and MUST INCLUDE THE NAL/Acct. No. referenced in the caption.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9702 9417, Return Receipt Requested and First Class Mail, to Echonet Corporation, P.O. Box 255, Evergreen, Colorado, 80439.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears
Acting District Director, Denver Office

Enclosure: Attachment A

cc: Charlie Ergen
5701 South Santa Fe Drive
Littleton, Colorado 80120

¹⁰ See 47 C.F.R. § 1.1914.